Cooperative Research and Development Agreements (CRADAs)

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Technology Transfer

- Statutory requirement to make Federal technology available to public
- DON laboratories execute and fund technology transfer
- Primary technology transfer tools
  - Cooperative Research and Development Agreements (CRADAs)
  - Licensing of Navy patents

http://www.onr.navy.mil/sci_tech/industrial/tt.htm

Primary CRADA Legislation & Regulations

- 10 U.S.C. 3710a - Established CRADA
- Executive Order 12591
- DoD Directive 5535.3, May 21, 1999
- DoD Instruction 5535.8, May 14, 1999
- SECNAV Instruction 5700.16A, March 7, 2000
  - CNR & CTO share Tech Transfer responsibilities
  - CRADA Signature delegated to lab/technical activities
  - Requires annual training of Tech Transfer staff

What is a CRADA?

- Legal agreement between a Government R&D laboratory and interested partners
- Allows partners to collaborate in mutually beneficial R&D in a specific technical area consistent with laboratory mission
- Pre-determines all intellectual property rights

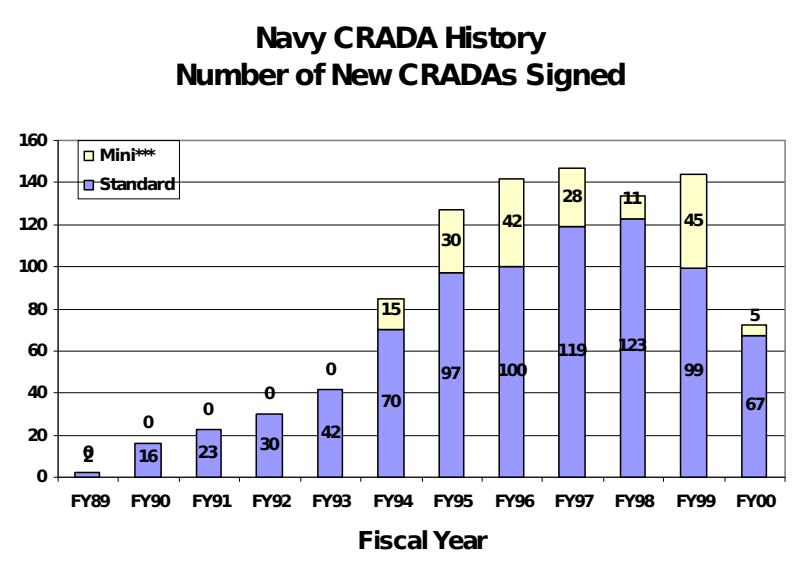
Ground Rules for a CRADA

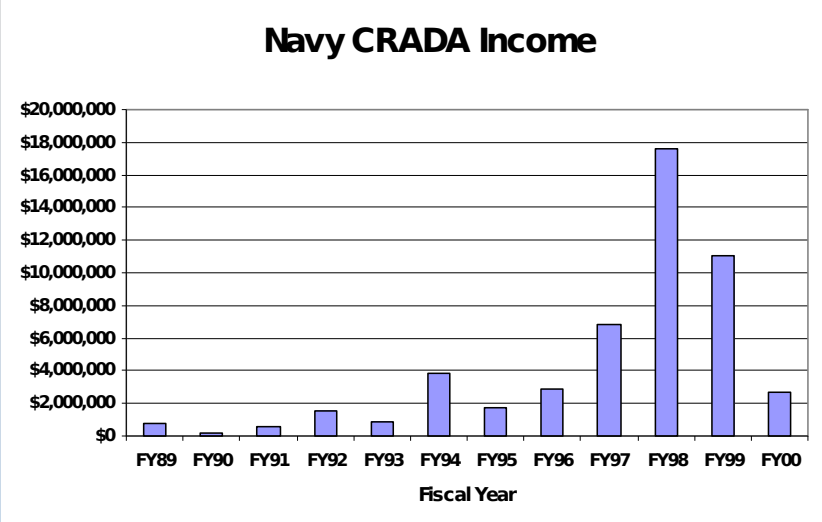
- **Partners can provide facilities, equipment, and personnel in support of the CRADA**
- **Government laboratories can enter into CRADAs with the private sector, universities, and state and local governments**
- **The non-Government partner can provide funds to the Government laboratory to perform tasks under the CRADA**
- **The Government laboratory CANNOT provide funds to their partners**

How a CRADA Differs from a Contract

- **NO funds can be transferred from the Government laboratory to their partners**
- **A CRADA is a legal agreement and not a procurement contract**
- **Therefore, a CRADA does not come under the control of the Federal Acquisition Regulations (FAR)**
- **CRADAs not required to be competitively announced**

Historical Perspective Charts





What is Contained in the CRADA?

- **Navy has a “living” Standard, or model, CRADA**
- **Provisions that do not change**
  - **Legaleze**
    - **Definitions**
    - **Intellectual Property**
    - **Indemnification/Liability**
    - **Termination**
- **Provisions that are specific to each agreement**
  - **Summary**
  - **Funding**
  - **Reporting**
  - **Statement of Work**

Typical CRADA Process

- **Navy & non-Navy researchers agree to work together**
- **Navy researcher works with lab Tech Transfer office**
- **Draft a CRADA, circulate for review**
- **Navy lab Commander and authorized non-Navy signatory sign final CRADA**
- **Distribute signed agreements to signatories and to ONR**
- **Researchers begin work**

Best CRADA Practices

- Tight statement of work
- Keep CRADAs open a reasonable length of time
- Advertising of CRADAs not required, but sometimes a good practice
  - **Only one opportunity**
  - **Establishing a sole source**
  - **Only known partner is foreign owned or influenced**

Potential CRADA Pitfalls

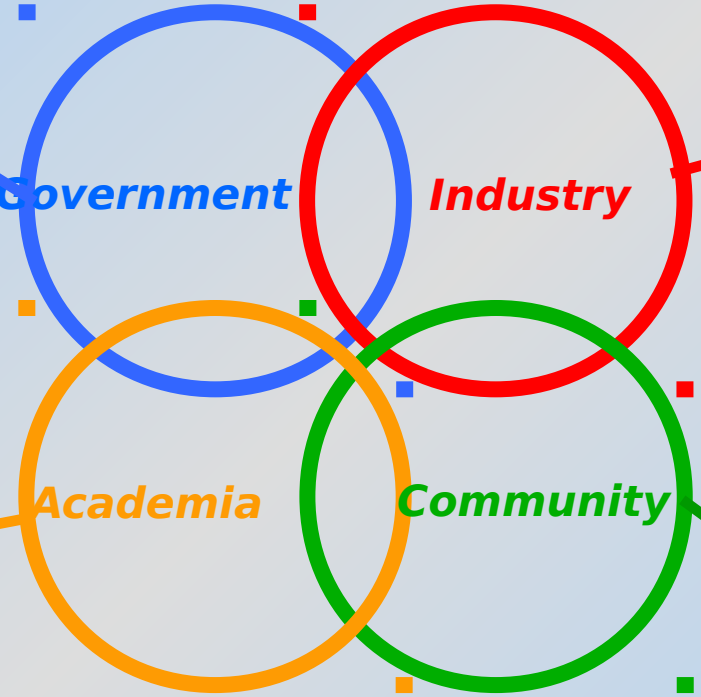
- Using a CRADA inappropriately
  - Jeopardize entire Navy program
- Support contractors, visiting scientists, etc. perform Navy CRADA tasks
  - IP disaster
- Work begins before CRADA is signed
  - Lab risks funding liability
  - Both parties risk invention liability

Partnering with Others

Local
National
International

- **Joint programs**
- **Data exchange agreements**
- **Hunter-Broker via ONR-EUR**

Cooperative Research & Development Agreemer



Education Partnership Agreements

Community Service

- **Educational**
- **Human Welfare**
- **Environmental**

CRADAs with foreign companies: Executive Order 12591

Executive Order 12591 (Apr 1987) requires that when entering a CRADA with a Foreign Owned Controlled or Influenced (FOCI) entity, DoD shall, in consultation with the US Trade Representative, give consideration to the following:

- ✓ **Whether the foreign government permits U.S. organizations to enter into CRADAs on a comparable basis.**
- ✓ **Whether the foreign government has policies to protect U.S. rights.**
- ✓ **Whether the foreign government has adopted adequate non-proliferation measures (e.g. is a participant in the Wassenaar Arrangement).**

Who approves a CRADA with a foreign company?

- **USTR “considers” #1 and #2, but not #3.**
- **Navy Foreign Disclosure Officials (FDO) are concerned with non-proliferation issues, i.e. #3.**
- **Each SYSCOM has their FDO:**
  - **NAVSEA: Pam Brant, SEA 09T1, (703) 602-3210**
  - **NAVAIR: Dan Prasada-Rao, AIR 7.4.1, (301) 757-6339**
  - **SPAWAR: Helen Bragg, SPAWAR 07X, (619) 524-2398**
  - **All others: Lori Troutman, IPO-01D, (202) 764-2399**

National Disclosure Policy criteria

The FDOs ensure that the NDP is followed. Each CRADA must meet the following NDP criteria:

- ✓ **Consistent with U.S. foreign policy objectives.**
- ✓ **Consistent with U.S. military and security objectives.**
- ✓ **Recipient will give information the same degree of protection as the U.S. provides.**
- ✓ **Benefits to the U.S. are at least equivalent**
- ✓ **Information will be limited to that which is necessary for the purpose of the CRADA**

Obtaining approval for a CRADA with a foreign company

- **Provide all of the following information (in ≤2 pages), along with a copy of the proposed Agreement:**
  - ✓ **Scope and objective of the CRADA**
  - ✓ **Contact info for the foreign partner**
  - ✓ **Will data to be shared or Subject Data be Classified?**
  - ✓ **Is the technology on the MCTL, ITAR, or CCL?**
  - ✓ **Justification for working with a FOCI organization instead of a U.S. company.**
    - ➢ **Name U.S. companies contacted**
    - ➢ **List public presentations at which U.S. company reps were present**
    - ➢ **Give factors that make the foreign company uniquely qualified**
    - ➢ **Identify the benefit to the U.S. Government**

CRADA Pitfalls

- **SBIR officers have various interpretations of SBIR policy wrt subcontracting funds to a Federal lab.**
- **NIST's Advance Technology Program (ATP) agreements require any participating Federal laboratory to forfeit rights to any IP created under the agreement to the small business member(s) of the ATP team.**

Typical CRADA

- ✓ **Parties = Navy lab + one company**
- ✓ **Company is a large or small U.S. business**
- ✓ **Objective is development of a commercial product or service based on technology developed by Navy for military application**
- ✓ **Company provides funding that includes Navy researcher(s) salary**
- ✓ **There is research being done and both sides “give” and “get”.**

Examples of Non-typical CRADAs

- ✓ **Parties = Multiple Navy labs and/or non-Federal entities**
  - ➢ **Navy lab + a consortium or joint venture group**
  - ➢ **Navy lab + other Federal lab + company**
  - ➢ **Navy lab + non-profit org. + company**
- ✓ **CRADA party other than a commercial business**
  - ➢ **University**
  - ➢ **Non-profit organization**
  - ➢ **State or local government**
- ✓ **Funds are received from a 3rd party sponsor**
  - ➢ **DARPA**
  - ➢ **Other Navy or DoD activity**
  - ➢ **Other Federal agency**
- ✓ **Company is Foreign Owned or Controlled**

Work for Others w/Appropriated Fund Activity

10 USC 2208- Working Capital Funded Organization sell excess inventory…

10 USC 2539b- WCFO sell samples, drawings, test services…

10 USC 2553- WCFO can sell articles & services under certain conditions

Work for Others w/Appropriated Fund Activity

- 10 USC 2681- Authority to sell test & evaluation services at major range & test facilities
- 10 USC 4543- Authority WCFO to sell articles or services under certain circumstances
- 22 USC 2770- Authority to sell defense articles & services to companies to support manufacture for foreign military sales

Work for Others w/Appropriated Fund Activity

- How do you do work for others if you are:
  - A hospital
  - An appropriated funded laboratory
  - A service academy
  - Naval Post Graduate School or other service school
    - » ????????

Work for Others
w/Appropriated Fund Activity